Appeals System Review Response Report

Workers' Compensation Board - Alberta

January 31, 2001

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Alberta

103-01772/

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WCB Workers' Compensation Board
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Minister Clint Dunford
Alberta Human Resources & Employment
Government of Alberta
324 Legislative Building
Edmonton, Alberta T5K 2B6

RE: WCB Response to the Appeals System Review Recommendations

Dear Minister Dunford:

Enclosed is the Workers' Compensation Board - Alberta's (WCB) response to the Appeals System Review Report we received on November 20, 2000.

The WCB viewed the report as an opportunity to improve services and glean fresh ideas. Although, the input that generated the reports was largely from a small group of dissatisfied stakeholders, their voice was not diminished in relevance, but was considered in the context of our response.

WCB supports the Government moving the Appeals Commission from its current portfolio of Human Resources and Employment to a new portfolio. This will ensure that the government ministry responsible for overseeing or creating workers' compensation legislation will not also be responsible for monitoring compliance to that legislation. We think this is an important step in restoring public confidence in the independence of the appeals system. We also support the recommendations that request the development of new processes for resolving medical conflicts. Discussions have already been initiated with the Alberta Medical Association and the College of Physicians and Surgeons of Alberta for development in 2001. We do not support recommendations that duplicate existing process or that make the appeals system more legalistic and cumbersome to navigate. We know that would move the process farther away from the intent of the Meredith Principles and the spirit of the Act.

We look forward to meeting with you to discuss the recommendations and our responses in detail in order to proceed with the larger initiatives of the reports.

Respectfully,

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Chairman, Board of Directors

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President & CEO

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Member, Board of Directors

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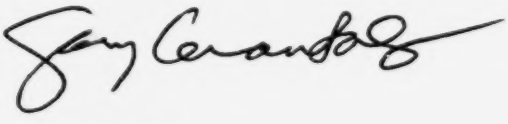

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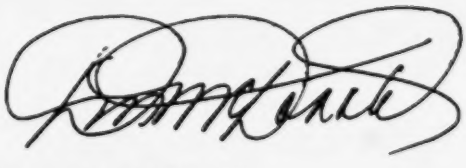

D.M. (Bud) McDonald
Member, Board of Directors

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Executive Summary

The Workers' Compensation Board – Alberta wishes to acknowledge the considerable efforts of the respective committees in analyzing the information they received and seeking solutions for the issues and concerns that were raised about the workers' compensation system. We can appreciate the complexities in considering the many details surrounding our processes, policies and legislation particularly since our organization has evolved and changed significantly over the last decade.

We have approached these recommendations from a perspective of seeking opportunities to improve our system for the benefit of all Albertans. We fully support the Minister of Human Resources and Employment's request for stakeholder input to the recommendations, as it is imperative that any changes to the workers' compensation system represent fairly the opinions of both workers and employers to preserve the intent of the Meredith Principles.

Overview

We are committed to implementing recommendations that will improve our system for the benefit of Albertans, while maintaining the Meredith Principles upon which the Workers' Compensation system was founded. WCB supports the Government moving the Appeals Commission from its current portfolio of Human Resources and Employment to a new portfolio. This will ensure that the government ministry responsible for overseeing or creating workers' compensation legislation will not also be responsible for monitoring compliance to that legislation. We think this is an important step in restoring public confidence in the independence of the appeals system. Critical to the success of the proposed move is a clear definition of the role of the Appeals Commission. The decisions of the Appeals Commission and the WCB must be within the same legislation, policy and regulations. To establish a framework of accountability for the Appeals Commission, we think that the government should appoint a Board of Directors to oversee the operations of the Appeals Commission.

One of the major themes of the Appeals System Review is a call for a move to a more conciliatory approach to issue resolution – that approach is supported fully by the WCB. We feel that the call for a conciliatory approach is in direct contrast to many of the administrative or process related recommendations, which would create a more legalistic, adversarial and expensive system.

It is equally important that the process be accessible, timely, and litigation free. The WCB does not want to see a more legalistic environment that is more complex and cumbersome for workers, employers, or the courts.

The recommendations within the report suggest sweeping changes that could cost millions of dollars – based primarily on the opinions of 805 dissatisfied workers. It is cause for concern that the Appeals Review survey took into account 805 opinions, of a population of 1.2 million workers and 95,000 employers currently covered by the system. We are cautious about adding costs to the system unless duly justified by the benefits.

Although we support the recommendation that would allow the Appeals Commission to move to a new ministry within the Government of Alberta – the final decision surrounding this proposal and all other administrative process changes with regard to the operations of the Appeals Commission is in the hands of the Government.

For discussion purposes in the executive summary, we have grouped all of the recommendations from the Appeals report into five themes: independence of the appeals process, rehearing of all appeals, exclusive jurisdiction, the use of medical expertise, and administrative process changes. In the detailed review of each of our responses, we have included suggestions for additional improvements to our service delivery processes. Our goal is to have a better workers' compensation system as a result of these recommendations.

Independence of the Appeals Process & Introduction of Dispute Resolution (2, 4, 9, 13, 15 & 29)

We support the recommendation to move the Appeals Commission outside the same ministerial portfolio as the WCB and suggest that establishing a Board of Directors for the commission will further support independence and accountability to Albertans. The WCB also supports the implementation of an Alternative Dispute Resolution (ADR) process. Upon careful consideration, WCB would prefer to have that ADR role incorporated within the WCB as a first level of service recovery and quality audit, which would add value to the organization and reduce the number of injured workers and employers requiring an appeal. An internal Alternative Dispute Resolution process would also be less costly, more efficient and offer the opportunity for staff to learn more from the process. Currently, our first level of appeal costs on average $550 versus the average cost for an appeal at the Appeals Commission of $4,900.

Rehearing of All Appeals heard by the Appeals Commission (28)

Recommendation 28 suggests that all denied worker appeals since the creation of the Appeals Commission in 1988 be given the opportunity to be reheard. There already exists a reconsideration power for any case that has new evidence as well as recourse should anyone feel they did not receive a fair hearing (judicial review, Provincial Ombudsman or the Human Rights Commission).

In order to be fair, WCB - Alberta would insist this alternative be made available equally to workers and employers. It is important to consider that rehearing these appeals could result in workers losing long-standing benefits or retroactive increases to employers' premiums.

If we look back twelve years (the period of time the Appeals Commission has been in place) we anticipate that we could rehear up to 24,000 appeals at an estimated cost of $117 million ($4,900 per appeal). This estimate is based upon the average annual number of appeals heard since the creation of the Appeals Commission. This cost does not take into consideration the possibility of changes in benefits and the administration behind the rehearing process. The administrative cost alone would increase the average premium rate for employers by 30%. At the Appeals Commission's current rate of hearing appeals, approximately 1,200 per year, if they reheard only prior years' contentious claims this process would take 20 years.

Exclusive Jurisdiction
(10, 12, 22)

Creating a new remedy of judicial appeal would make the system too legalistic, delay resolution, add expense for injured workers/employers and overburden the court system.

Nova Scotia has judicial appeal and sees 80 to 100 appeals to the courts per year. Based on their size relative to Alberta, we think it reasonable to anticipate some 400 to 500 appeals to the courts in Alberta. This would almost double the current docket of cases that the Court of Appeal in Alberta hears annually.

WCB also sees this as moving away from the fundamental Meredith principle put forward as a foundation for the workers' compensation system – the historical social contract between employers and workers for a no-fault insurance system where litigation was not a factor for worker or employer.

Use of Medical Expertise
(7 & 8)

WCB supports all of the recommendations that would establish a new process for the use of medical expertise in resolving cases. The majority of the recommendations regarding the use of medical expertise focus on developing new processes. The WCB supports the development of new processes, and has initiated discussion with the College of Physicians and Surgeons of Alberta and the Alberta Medical Association. The new processes will encompass improvements in the areas of:

- relationships with the attending physician
- establishing 'fitness' to return to work
- the use of medical panels
- defining a 'conflict of medical opinion'

The opportunity for all parties to the system to gain a shared understanding and agreement on medical issues, such as the role of medical advice and what is a legitimate conflict of medical opinion, will increase stakeholder support and trust in our system.

We recognize that the process for medical panels must be reasonable and workable within the context of the medical resources available in Alberta. Convening medical panels on every disagreement between medical information would unreasonably overburden the health care system in Alberta. The WCB frequently resolves unclear information through a phone call to the physicians – a more practical and time effective resolution.

Overburdening the system is a real concern when you consider:
There are 5,000 physicians in Alberta – general practitioners and specialists. Each medical panel consists of three (3) specialists. If panels were convened for even 10% of the number of claims WCB receives annually (approximately 140,000), 42,000 doctors would be required to participate in medical panels at a cost of $84 million. Should only 1% of the claims received wish to use the medical panel process WCB would require 350 specialists per month at an annual cost of $8.4 million.

Access to doctors in Alberta, especially specialists, is limited. Medical expertise is a precious resource for our community and convening medical panels should happen only when all other avenues of resolution are exhausted. If we convene a large number of panels we will impact the whole province – not just injured workers. Depending on the frequency of use, issues of access could delay treatment and rehabilitation progress for injured workers and every Albertan.

Administrative Changes
(1, 3, 5, 6,11, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 30, 31 & 32)

There are 20 recommendations that deal with process changes in the administration of the appeals process from who writes the decision to external representation. WCB disagrees only with those recommendations that would make the current appeal process in conflict with the Meredith principles and result in a more legalistic, expensive and exclusionary system. Among these recommendations are:

- introduction of new avenues to litigate or involve the courts
- introduction of a clerk's office
- a lawyer fulfilling the role of the Chief Appeals Commissioner
- filing of decisions with the courts
- a simulation of the precedence system which would begin to supersede the current approach of evaluating each individual case on its own merit.

These, among others, would create a more legalistic and expensive system that will limit accessibility for workers and employers (specifically, recommendations 3, 5, 6, 11, 14, 23, 25 & 30).

Recommendation Summary

The Appeals Review report commissioned by the Minister responsible for the Workers' Compensation Board – Alberta listed a total of 32 recommendations. We support 16 of the 32 recommendations or 50%, they are: 1,2, 7, 8, 9, 11, 13-17, 19-21, 26 and 31. WCB disagrees with 3-6, 10, 12, 18, 22, 23-25, 27-30 and 32.

Explanation of Status

In the WCB-Alberta response to the report "The WCB Appeal Systems: are they working well?" the following terms were used to describe the status of recommendation:

Completed – The WCB - Alberta feels that it has completed the actions required to ensure this issue is resolved, and no further activity is required.

Existing – The WCB - Alberta has a program, service or policy already in place to deal with this issue, and has ongoing activity that directly impacts the recommendation and the needs of stakeholders.

Under Development – The WCB has initiated work on this issue and is in preliminary stages of discussion, consultation and planning with stakeholders.

Planned / In Progress – The recommendation is contained in concept form in the WCB - Alberta's strategic business plan or in progress. WCB - Alberta makes a commitment to review the recommendation further based on implementation of the strategic business plan.

Supported/Partially Supported – WCB - Alberta agrees with the recommendation but is unable to proceed with implementation because of legislative, funding or policy roadblocks. External action will be required to facilitate implementation.

Not Supported – WCB - Alberta does not support the recommendation, for reasons listed in the response to each recommendation. The primary reasons are:

- It creates an imbalance between injured workers and employers
- It adds cost or complexity to the system without an offsetting benefit
- It creates a two-tiered system for different types of injured workers

The following section provides a detailed explanation of our position.

Appeals Review Recommendation 1

It is recommended that when a claimant has formally notified the WCB of his/her intent to appeal and before the appeal process is activated, the informal supervisory review shall be limited to a newly regulated time period of 30 days. It is also recommended that the time limit commence three days from the date that the Notice of Appeal is received by the Clerk's Office in the WCB (see Recommendation 3). The case manager's supervisor must provide active guidance in the supervisory review process. The supervisor must sign the letter to the claimant describing the outcome of the review. In spite of the case manager's right to conduct this review, emphasis is to be placed on the importance of accuracy in the first decision to ensure that those who do not to appeal, are reasonably assured that their case has been accurately assessed for eligibility and rate of benefit. Section 12(3) of the Workers' Compensation Act (WC Act) is to be amended to reflect the occurrence of this review as well as the 30-day time limit.

WCB - Alberta Response **Status: Planned**

- The WCB agrees that a mandatory supervisory review of a new appeal should occur within 30 days notice of an appeal being filed.
- At present, the WCB has a process for supervisory review of appeals, on cases with junior case managers and adjudicators, that currently has a turn-around of 10 days.
- In 2001, we will require supervisors to review all appeals, regardless of the seniority of the case managers and adjudicators, within the 30-day time limit.
- We feel this time limit is a procedural matter and is not appropriate to include in the legislation.
- The WCB is prepared to commit to a service standard of not more than 30 days for completion of a supervisory review.

Opportunity for Improvement

- We are focusing on linking our planned supervisory review process with our decision writing quality assurance audit. Our decision letters are the initiating document for most appeal issues. The quality of these letters is a key contributing factor in the appeal being formed and can have a significant impact on the outcomes of the appeal process.
- Improvement in the quality of decision letters in conjunction with a supervisory review of all appeal issues within the expressed time limit, will give the WCB the opportunity for service recovery with the appellant. This should increase customer satisfaction and may also reduce the number of appeals.

Background

- In the fourth quarter of 1999, the WCB introduced a Style Guide for communicating decisions to clients. The guide focuses on providing clients with all of the relevant facts relating to the issue, the applicable policy and outlining the decision within the context of the policy. The goal is to help clients better understand how and why the decision was made.
- Audits through our internal Training and Quality Assurance area indicate steady improvement in compliance with the style guide since the inception of the program; however, the current score of 68.5% compliance is still below the target of 71%. The proposed target for 2001 is 75%.

Appeals Review Recommendation 2

It is recommended that a mandatory alternative dispute resolution process be established through Alternative Dispute Resolution (ADR) Officers located in the Office of the Appeals Advisor. These Officers would assist the claimant/employer and the WCB case manager/assessment adjudicator to resolve disputes once a claimant has filed a written Notice of Request to Appeal filed with the Clerk's Office. The ADR process will take no more than 45 days to complete and the timeline will be regulated. Where the dispute resolution process is not successful due to a continuing difference in medical opinion, the Clerk's Office would be responsible to assign the matter to the Medical Resolution Committee (see Recommendations 3, 5, and 7).

WCB - Alberta Response **Status: Existing**

- The WCB supports the concept of pre-hearing resolution of appeal issues through the most expedient means.
- At present, one of the major functions of the Office of the Appeals Advisor is to seek issue resolution with the case manager prior to the matter proceeding to appeal. The resolution function of the appeals advisor is not a true alternative dispute resolution (ADR) function in that the appeals advisor is a representative or advocate on behalf of the injured worker and is not a neutral mediator.
- The WCB suggests that it would be inappropriate for an appeals advisor to wear both hats – as the unbiased mediator and the worker's advocate.
- The WCB suggests that, where necessary, the Claims Services Review Committee (CSRC) /Assessment Review Committee (ARC) can assume the role of unbiased mediator as part of an internal dispute resolution process.

Opportunities for Improvement

Although the pre-hearing resolution rate achieved by the appeals advisors is already impressive, the WCB suggests that by formalizing an internal dispute resolution process, there can be greater effectiveness reflected in higher resolution rates. Under this proposal, the appeals advisor would maintain the role of the worker's advocate in the process and the CSRC would assume the role of the unbiased mediator. Resolution rates will be closely monitored in order to gauge effectiveness.

Background (refer to existing and proposed function charts in this report)

- The annual number of appeals to the CSRC/ARC is 3,680. The average cost of a CSRC/ARC appeal is $550.
- The annual number of appeals to the Appeals Commission is approximately 1,225. The average administrative cost per appeal in 2001 will be $4,900.
- The pre-hearing resolution rate for Appeals Advisors in 2000 was 1,001 cases out of 3,032 or 33%.
- Placing the mediator role with the CSRC is part of a redefinition of the CSRC function (which is expanded upon elsewhere in this document) that is designed to increase pre-hearing resolution rates, decrease the number of appeals to the Appeals Commission and provide better service to customers.

Appeals Review Recommendation 3

It is recommended that a Clerk's Office be established within the Appeals Commission, whose primary function would be to monitor and ensure compliance with all regulated timelines in the appeals process, commencing with the case manager's review. The Clerk's Office would be the first receiver of the written notice of Request to Appeal in the supervisory review process, the alternative dispute resolution (ADR) process, the Medical Resolution Committee review, and the appeals process. It would be responsible to direct the request to the Office of the Appeals Advisor. To minimize time loss within the 30-day time limit of the Case Manager/Supervisory review and, if the claimant wants the service, the Clerk's Office would ensure that an Appeals Advisor was assigned to the claimant or employer in a timely manner.

Upon the expiry of the 30-day time limit, the Clerk's Office would contact the appellant to determine their intent to continue or discontinue the appeal to the Appeals Commission. If there were a desire to continue the appeal, the Clerk's Office would notify the Alternative Dispute Resolution Office. At the same time, the Clerk's Office would mail the appellant clear, easily understood ADR and Appeal Systems information and all required forms.

WCB - Alberta Response **Status: Not Supported**

- The WCB agrees that a clear and consistent intake mechanism is required to notify the Appeals Commission of an appellant's intent to appeal.
- Informally this process already exists at the Appeals Commission through the Registrar.
- Implementing a new system will add additional cost to the process. At present, the Appeals Commission requires two staff with clerical support to manage 1,200 to 1,400 appeals a year. To additionally deal with the 3,600 Claims Services Review Committee (CSRC) appeals and those appeals that are informally resolved by case manager or adjudicator (estimate of 1,500) would be a significant new effort for the Appeals Commission. Our initial cost estimate is in the range of an additional $450,000 to $600,000.

Opportunity for Improvement

The WCB will reinforce standards for receipt, acknowledgement, and processing of appeals and communicate these to appeal parties in order to set expectations.

Background

- At the time a WCB client receives a decision letter they are also informed of their right to appeal, the time limitation of that right, and the process they must follow to file their appeal.
- The WCB case manager or adjudicator and the first appeal level have already reviewed the file to ensure clarity of the issues under appeal. If the recommendation to implement the dispute resolution process were accepted, in addition to the 30-day supervisory review, this new administrative mechanism would be a duplication of effort with respect to clarifying the issues of appeal.
- The WCB recommends maintaining the CSRC as a review body, as well as implementing a dispute resolution process. The first level of appeal, CSRC/ARC, resolves almost 70% of the appeals that come forward. Registering all appeals at the Clerk's Office would be an unnecessary step for an average of 2,400 appeals annually.
- The Appeals Commission has two employees with administrative support to process 1,200 to 1,400 appeals per year. Assuming numbers from 3,600 to 5,100 would require an increased investment in staff – nine to 12 staff of varying backgrounds from clerical to policy expertise. Assume average wage, benefit and employment costs of $50,000 per person equals $450,000 to $600,000.

Appeals Review Recommendation 4

It is recommended that the Office of the Appeals Advisor report to the Ministry of Justice. Appeals Advisors would be selected based on their knowledge and experience with WCB adjudication and related disciplines. They are to have legal, paralegal, or proven related work experience and training. It is further recommended that all future Managers of the Office of the Appeals Advisor have a legal background or related work experience, since that position would be supervising Appeals Advisors who will be expected to have legal, paralegal or proven related work experience and training. Appeals Advisors should come from a variety of different backgrounds. The Office of the Appeals Advisor is to be expanded to include Alternative Dispute Resolution Officers.

WCB - Alberta Response **Status: Not supported**

- The WCB suggests that externalizing the Office of the Appeals Advisor (OAA) would not make it more effective. Outsourcing the OAA would tend to make the dispute resolution and appeal processes more adversarial than conciliatory.
- The demand for existing OAA services exceeds their present ability to deliver, which indicates high worker confidence in the services. We believe the perception that the OAA lacks independence is not a widely held perception.
- The OAA currently resolves approximately 33% of all appeals before going to hearing. This conciliatory approach versus an adversarial approach is more consistent with other recommendations in the report.

Opportunities for Improvement

The opportunity to improve the pre-hearing resolution process is discussed under Recommendation 2. There is also an opportunity for the WCB to evaluate the capacity of the OAA to deliver the services required by injured workers.

Background

- Facts to note:
  - cases in 2000: 3,032 (2,056 new appeals & 976 carried over from 1999)
  - hearings in 2000: 972
  - pre-hearing resolutions in 2000: 1,001 or 33%
  - Appeals Advisors on average have over 10 years WCB claims experience
- Since demand for services exceeds capacity, the OAA is required to maintain a waiting list.
- Appeals Advisors can take a shared responsibility approach with case managers in the dispute resolution process, whereas external advocates tend to proceed straight to appeal. This has been the experience of the Nova Scotia Workers' Advisors Office, which is external to the Nova Scotia WCB.
- Costs associated with outsourcing the Office of the Appeals Advisors are approximately $1.1 million for staff transition (severance) plus related human resources, information management, and facility and relocation expenses.
- There would be additional ongoing administrative costs associated with operating an outside office as opposed to an inside office. Currently, the annual administrative cost of operating the internal Office of the Appeals Advisor is about $1 million, while the annual cost for the external Nova Scotia Workers' Advisors Office is $1.7 million. Alberta has five times the volume of lost time claims that Nova Scotia has.

Appeals Review Recommendation 5

It is recommended that since appellants can choose to receive the services of an Appeals Advisor who is paid by the WCB, they should also have a choice at no cost to them, as to whether they utilize the services of an external representative. It is recommended that the WCB provide funding for claimants to hire an external representative for the purpose of opinion gathering or representation. The amount provided to each claimant for hiring an external representative should be a nominal amount, for a reasonable amount of time, based on the Alberta Legal Aid Tariff.

WCB - Alberta Response **Status: Not supported**

- The provision of a free appeals advisory service in the form of the Office of the Appeals Advisor (OAA) provides an effective and cost-sensitive alternative that is equally accessible to all workers.

Opportunities for Improvement

As indicated under Recommendation 4, the WCB has to manage the OAA's capacity.

Background

- At a minimum, the administrative cost of this recommendation is estimated at about $1 million per year based on the Legal Aid Tariff (3,000 appeals x $60 per hour x 5 hours). Using the Legal Aid model, an administrative infrastructure would need to be established to receive, approve and pay bills and a separate appeal structure would also need to be created for representatives seeking more than the amount awarded.
- This concept was experimented with in Nova Scotia where lawyers were provided at no cost to workers and the annual cost was about $2.8 million. Alberta, as a much larger province, has approximately five times the volume of lost time claims as Nova Scotia.

Appeals Review Recommendation 6

It is recommended that independent legal advice be paid for by the WCB and made available to employers for matters of assessment. The amount provided to each employer for hiring an external representative should be a nominal amount, for a reasonable amount of time, based on the Alberta Legal Aid Tariff.

WCB - Alberta Response **Status: Not supported**

- The WCB presently provides an extensive information network to employers in the form of account managers, courses and seminars as well as published and electronic information.
- Our new service delivery model "Customer Connect", that was created to, among other things, establish better relationships between case managers and employers, represents another avenue for employers to access in support of an appeal.

Opportunities for Improvement

The WCB can also examine ways to improve the delivery of information to employers through existing mechanisms such as training courses, seminars, on-site visits, publications and the website.

Background

- The major beneficiary of this recommendation would be the legal profession. The cost is difficult to estimate, but it is likely that enterprising lawyers would market their services to employers, especially since the WCB is paying. If one-third of the present 94,000 employers sought a legal opinion at the Legal Aid Tariff rate of $60 per hour for five hours worth of services, the annual cost would be $18 million.
- Employers who do not access this free legal service would be subsidizing employers who do.
- The WCB at present offers, free of charge, extensive training to employers in matters relating to appeal, financial incentives, management of a WCB account, disability management in the workplace and other subjects.
- The infusion of even more lawyers to the process would make the workers' compensation system more legalistic and adversarial.

Appeals Review Recommendation 7

It is recommended that a Medical Resolution Committee be established under the auspices of the Appeals Commission to review all cases where there is a difference of medical opinion between the medical advisor and the treating physician. A physician of the claimant's choice must be given reasonable opportunity to firstly, participate as a Medical Resolution Committee member (with his or her attendance paid for by the WCB) or, secondly, be contacted by the Committee Chairman to discuss the differing medical opinion of the diagnosis. Where the treating physician declines to attend the Committee review session, the Committee Chairman will represent the input of the treating physician.

The appellant must be examined by the most appropriate member on the Medical Resolution Committee and the cost of the examination will be paid by the WCB. The Committee's decision will be final and binding on all parties as it relates to the medical facts of the case. A medical report will be forwarded to the Appeals Commission to be used as evidence. The members of the Committee are to be chosen from a continually updated list of specialists appropriate to the injury, selected by a medical body that is independent of the WCB and Appeals Commission, such as the College of Physicians and Surgeons or the Alberta Medical Association. The existence, appointment process, and powers of the Medical Resolution Committee are to be legislated within the WC Act.

WCB - Alberta Response **Status: Under Development**

- We agree there is merit in establishing a new process for the resolution of differences of medical opinion.
- The WCB has initiated discussions with the College of Physicians and Surgeons of Alberta (CPSA) and the Alberta Medical Association (AMA) to establish a process that will meet the needs of all our stakeholders and be truly independent.
- This recommendation regarding Medical Resolution is similar in nature to the Medical Panel process as outlined under the Service Review Committee Recommendations 13 through 16.

Opportunities for Improvement

The opportunity for all parties to the system to gain shared understanding and agreement on what is a legitimate conflict of medical opinion will increase stakeholder support and trust in our system. In our discussions with the Alberta Medical Association (AMA) and the College of Physicians and Surgeons of Alberta (CPSA) we will develop a definition or guideline for determining a 'conflict of medical opinion'. Based on this definition, we can then clearly identify cases requiring a medical resolution process.

Background

- The discussion process with CPSA and AMA will establish a shared definition of "conflict of medical opinion".
- This definition should make a distinction between "unclear medical status" which may require additional expertise or information, such as an Independent Medical Examination, to resolve and a "conflict in medical opinion" when medical experts don't agree. Only the latter should require a full Medical Panel for resolution.
- The cost of convening one independent medical panel is projected at $6,000.
- In 2000, a total of 26 medical panels were convened. Of those convened, 75% recommended no change in interpretation of the medical facts of the case as interpreted by the WCB. Of the 25% where the interpretation was changed, 75% were changed in favor of the injured worker, and 25% in favor of the employer.
- Each medical panel consists of three specialists. If panels were convened for even 10% of the number of claims WCB receives annually (140,000), 42,000 doctors would be required to participate in medical panels at a cost of $84 million. Should only 1% of the claims received wish to use the medical panel process, WCB would require 350 specialists per month at an annual cost of $8.4 million.
- Access to doctors, especially specialists, is limited. Convening a large number of panels will increase waiting times, delay treatment and rehabilitation progress, as well as a return to work for the injured worker.

Appeals Review Recommendation 8

It is recommended that the Minister of Health & Wellness begin a consultative process with the College of Physicians and Surgeons to ensure that concerns with respect to the independence, case review protocols, and processes of the WCB Independent Medical Examiners and WCB Internal Medical Advisors are dealt with in the Act.

WCB - Alberta Response **Status: Under Development**

- WCB agrees that we need to work with the College of Physicians and Surgeons of Alberta to ensure that concerns with independence, case review protocols and processes are dealt with properly in the Workers' Compensation Act.
- We have already initiated discussions with the College of Physicians and Surgeons of Alberta (CPSA) and the Alberta Medical Association (AMA) in that regard.
- The new processes will encompass improvements in the areas of: relationship with the attending physician, establishing fitness to return to work, the use of medical panels, and the definition of a legitimate conflict of medical opinion.

Opportunities for Improvement

Developing a shared understanding and agreement on what is a legitimate conflict of medical opinion will increase stakeholder support and trust in our system. Based on this definition, cases can be clearly identified as requiring a medical resolution process.

Background

- Key to the discussion above will be a clear guideline on the use of medical panels. We need to find a process that is fair and equitable to all parties and that is used only when all other avenues are exhausted. This will ensure a fair and expedient process without monopolizing the majority of medical resources available in the province.
- The discussion process with CPSA and AMA will establish a shared definition of "conflict of medical opinion", making a distinction between "unclear medical status" which may require additional expertise or information, such as an Independent Medical Examination, to resolve and a "conflict in medical opinion" when medical experts don't agree. Only the latter should require a full Medical Panel for resolution.
- The process must be reasonable and achievable in context of the medical resources available in Alberta.
- The cost of convening one independent medical panel is projected at $6,000.
- The total number of panels convened in 2000: 26

- Each medical panel consists of three specialists. If panels were convened for even 10% of the number of claims WCB receives annually (140,000), 42,000 doctors would be required to participate in medical panels at a cost of $84 million. Should only 1% of the claims received wished to use the medical panel process, WCB would require 350 specialists per month at an annual cost of $8.4 million.
- Access to doctors, especially specialists, is limited. Convening a large number of panels will increase waiting times, delay treatment and rehabilitation progress, as well as a return to work for the injured worker.

Appeals Review Recommendation 9

It is recommended for worker and employer appellants that the CSRC and ARC be eliminated in favor of a mandatory alternative dispute resolution process.

WCB - Alberta Response **Status: Planned**

- The WCB supports the concept of a review process preceding one level of appeal.
- The WCB suggests that the existing Claims Services Review Committee/Assessment Review Committee process be redefined as a three part function:
  - exploring resolution opportunities in a dispute resolution process (refer to commentary under Recommendations 2 and 4)
  - preparing the files for submission to a formal appeal at the Appeals Commission by ensuring sufficiency of evidence and clarity of issues
  - as senior staff with great experience, fulfilling a quality assurance, mentoring and consulting role to case managers and adjudicators

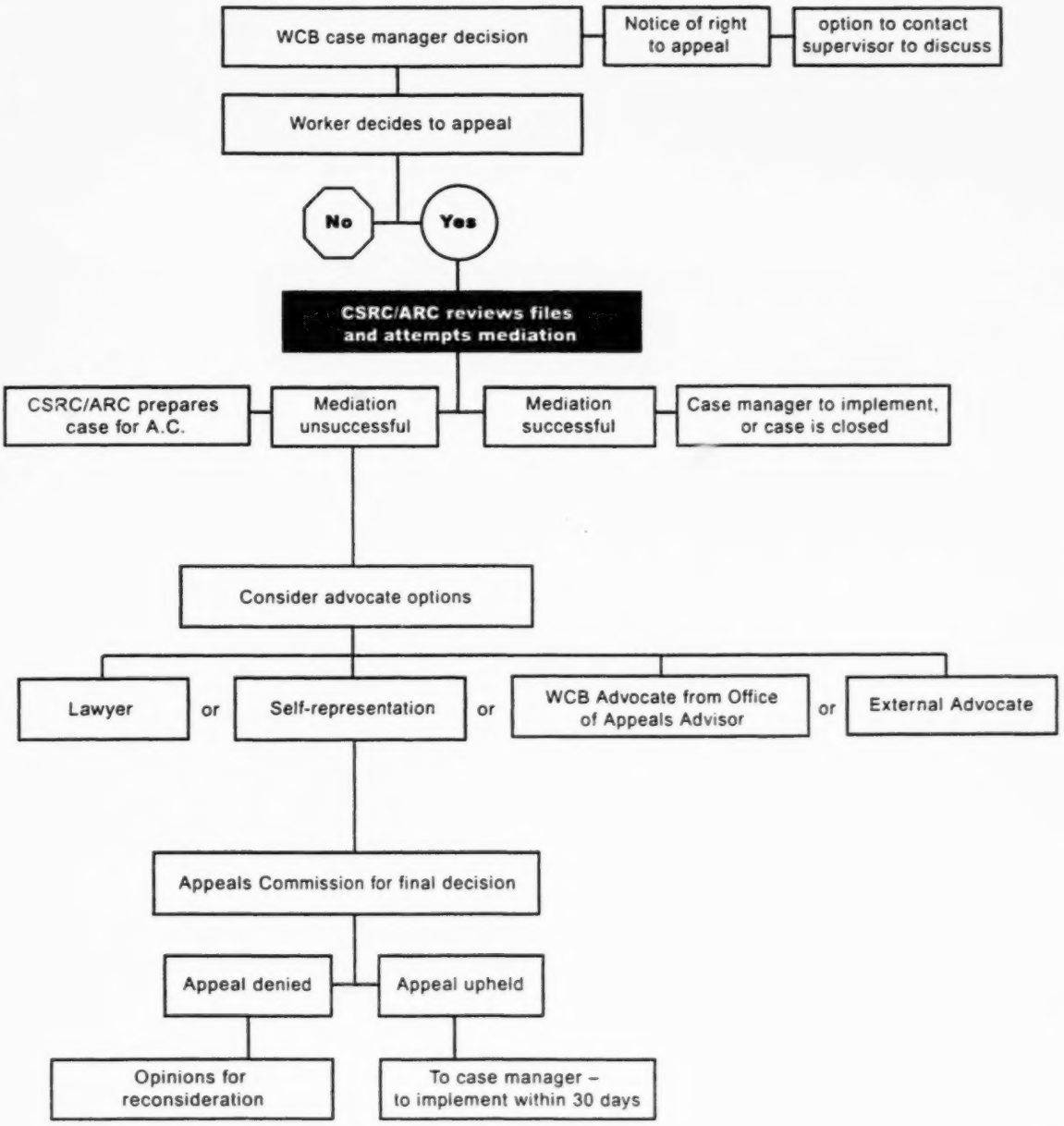
Opportunities for Improvement

The WCB believes the role of the existing Claims Services Review Committee and Assessment Review Committee should be redefined as described above. This will allow for more effective resolution of appeal issues prior to the formal appeal process. It will also allow greater administrative efficiency by ensuring that files are ready for appeal and prevent files from being routed back and forth creating error and delays. It will also enhance corporate learning by allowing the expertise of senior staff to be shared with case managers and adjudicators.

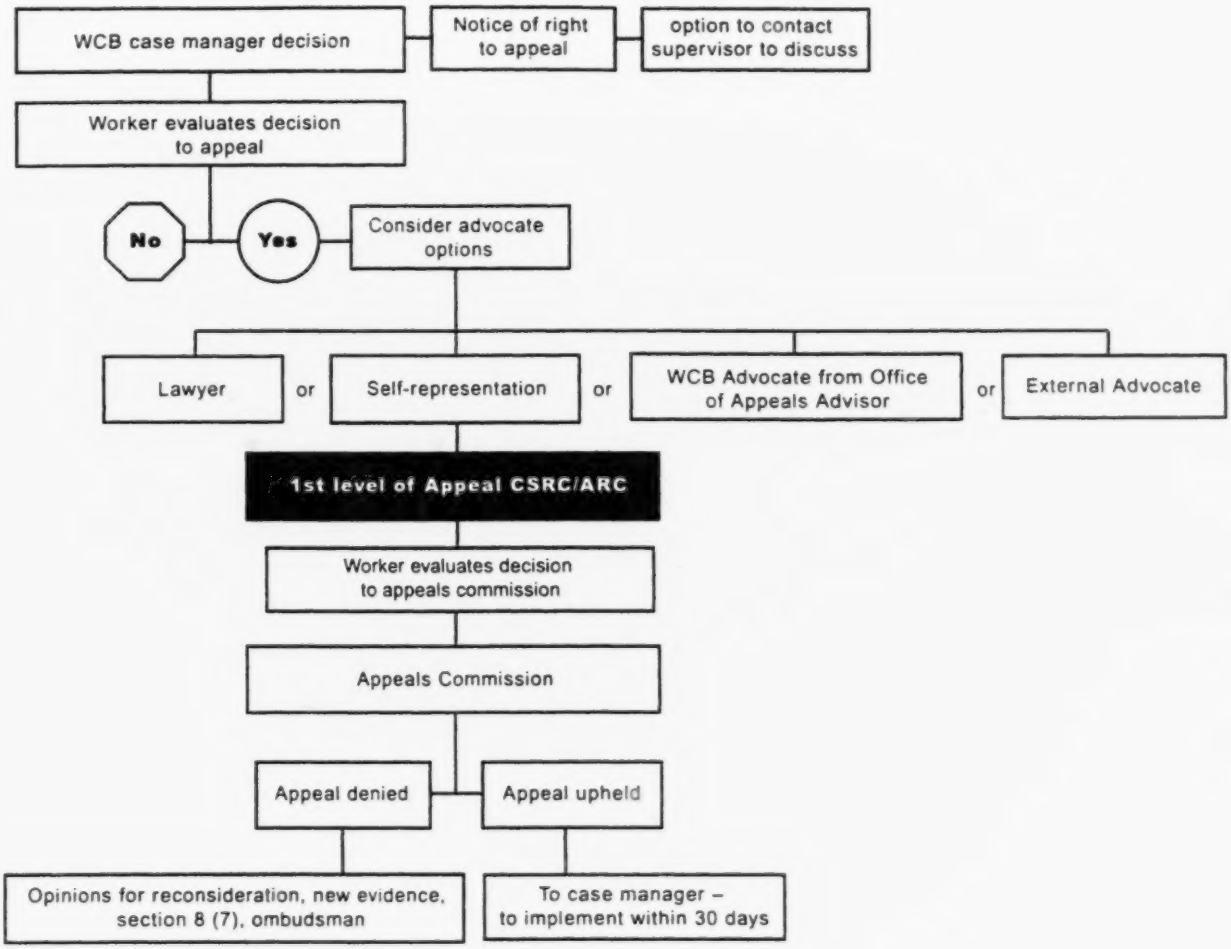
Background

- An internal review conducted by WCB Management Audit Services in 1999 contemplated that the CSRC/ARC should redefine its role in accordance with the three-part model detailed above. The initiative was suspended pending the completion of the Friedman report.
- The WCB strongly feels that there must be an intermediate level of review prior to a case entering the formal appeal process with the Appeals Commission. At present, the CSRC handles approximately three times the volume of cases as the Appeals Commission. It is therefore imperative that there be some kind of filter, in the form of intermediate review, in order to ensure that additional cases do not unnecessarily proceed to the Appeals Commission.
- From the perspective of the parties to the appeal, this filter should focus upon pre-hearing resolution through the internal dispute resolution process.
- If this recommendation were to be implemented as written, the major cost would be approximately $2.0 million in termination costs.
- Legislative amendment would be required to give effect to this recommendation.

New Process


WCB case manager decision
Notice of right to appeal
option to contact supervisor to discuss
Worker decides to appeal
No
Yes
CSRC/ARC reviews files and attempts mediation
CSRC/ARC prepares case for A.C.
Mediation unsuccessful
Mediation successful
Case manager to implement, or case is closed
Consider advocate options
Lawyer
or
Self-representation
or
WCB Advocate from Office of Appeals Advisor
or
External Advocate
Appeals Commission for final decision
Appeal denied
Appeal upheld
Opinions for reconsideration
To case manager – to implement within 30 days

Current Process



Appeals Review Recommendation 10 & 12

It is recommended that an appeal lies to the Court of Appeal from any order, ruling or decision of the Board or Appeals Commission involving any question as to its jurisdiction or any question of law. The appeal shall be made within 30 days from the date of the order, ruling or decision appealed from. (In simpler terms: An unhappy party may appeal to the Court of Appeal on questions of law or jurisdiction with regard to any decision of the WCB or the Appeals Commission.)

It is recommended that Section 7(7)1 of the WC Act dealing with the privative clause be deleted and replaced with the drafted legislation that appears in Appendix 2.

WCB - Alberta Response **Status: Not Supported**

- The WCB does not support this recommendation because we think the existing judicial review mechanism provides adequate judicial control over the workers' compensation system.
- Creating a new remedy of judicial appeal would make the system too legalistic and complicated delaying resolution, adding costs and overburdening the court system. Nova Scotia has judicial appeal and sees 80 to 100 of these appeals per year. Based on their size relative to Alberta, we think it reasonable to anticipate some 400 to 500 appeals in Alberta. This would almost double the annual docket of appeals to the Alberta Court of Appeal.
- An initial estimate of the cost of implementing this recommendation is $5 million. This does not include the costs for extra Court of Appeal judges, court staff and Department of Justice lawyers.
- The WCB prefers to reform the appeal system as suggested in this response document to restore confidence in the system. Making the system more legalistic and exclusionary was never the intent of the Meredith Principles that are the foundation of the Workers' Compensation Act – we would prefer to improve the current system.

Opportunity for Improvement

Both the WCB and the Appeals Commission should strive to improve the clarity of their decisions. WCB has already made efforts in this area with the implementation and quality monitoring of the Decision Writing Style Guide (developed in partnership with Andy Simms Q.C.). Better communications and consistent decisions should reduce the perceived need for intervention by the courts.

Background

- As recently as last year, the Court of Appeal in the Medicine Hat case recognized that the WCB has more expertise than the courts in dealing with workers' compensation matters.
- The Supreme Court of Canada recognizes that Workers' Compensation Boards have more expertise than the courts in dealing with workers' compensation matters and supports exclusive jurisdiction.
- The initial estimated cost of $5 million to implement this recommendation is based on 500 cases x $10,000 in legal fees paid by the WCB to external lawyers to represent appellants in each case. This does not include the additional costs of extra Court of Appeal judges, court staff and Department of Justice lawyers.

Appeals Review Recommendation 11

It is recommended that the decision of the Appeals Commission shall be implemented by the WCB within a 30 day regulated timeline unless the WCB alleges that there was a violation of policy as stated in 8(7) of the Act and states a case to the Court of Queen's Bench within 30 days. Section 8(6) of the WC Act is to be revised to state: "Unless the matter is proceeding to court, the Appeals Commission may confirm, reverse, or vary the decision or determination appealed, and the Appeals Commission's decision "shall"(rather than "may") be enforced as if it were made by the Board."

WCB - Alberta Response **Status: Existing**

- WCB - Alberta agrees that all Appeals Commission decisions should be implemented within 30 days of receiving the decision. Currently, WCB has a ten-day standard for implementation of Appeals Commission decisions.
- Anyone wishing to enforce decisions may already do so through the courts (i.e., judicial review).
- Note: It is questionable whether the WCB - Alberta already has standing before the courts in order to challenge Appeals Commission interpretation of legislation or policy in judicial review. The WCB proposes as an alternative to Section 8(7) that WCB has standing both before the Appeals Commission and the courts in judicial review in order to provide background on the interpretation of legislation or policy.

Opportunity for Improvement

In the background information below, a number of examples are given where an appellant may be confused regarding what winning their appeal means. In both writing the decision and implementing it, the WCB and the Appeals Commission should be very clear on what implementation of a decision will look like in terms of benefits or next steps.

Background

- The current practice of the WCB is to immediately implement decisions of the appeals bodies on receipt of the decision. Procedurally, case managers are expected to take action on implementing decisions within 10 days of receiving notification of the decision.
- We do not suggest that the 10 days are not exceeded in some instances. Expectations and perceptions can also be an issue – it may appear that we are not complying with the Appeals Commission even though we are, for example:
  - The decision, while indicating that the appellant was successful, actually does not result in any further compensation payable. The appeals body decides that a claim is acceptable, but there was no time lost from work and consequently no wage loss benefits are issued. The decision has been implemented, but the appellant does not believe the decision has been honored since they do not receive anything or see any new activity arising from the decision.
  - The wording of the decision is ambiguous or directs further investigation. The Decision states that the WCB is to "...investigate entitlements due to chronic pain". This decision may be interpreted differently by the appellant than by the WCB case manager and would require further investigation as indicated in the Appeal decision. The investigation would result in another decision that the appellant may or may not support.
- The WCB recognizes that the proposed expanded role for the Claims Services Review Committee (CSRC) will help minimize these occurrences. Many of these cases are a result of the narrowness of the current appeals process and the current inability of the CSRC to examine or exhaust alternative services prior to sending an appeal to the Appeals Commission.
  Example of narrowness of role: Under the legislation, at the appeal stage only the issue brought forward by the appellant can be considered– not the issues that may be causing conflict. For example: an entitlement to total temporary disability benefits (TTD) is made, but upon review, the CSRC can see that the concerns could be addressed through other benefit entitlements such as vocational rehabilitation (VR) benefits. The CSRC can only rule on the TTD and not the VR.
- Section 8(7) has not proved an effective remedy in curing improper application of policy or legislation by the Appeals Commission. Allowing the WCB, in its discretion, to have standing before the Appeals Commission and the courts in Judicial review, would ensure a greater degree of legislation and policy compliance by the Appeals Commission. This is important in cases having system-wide implications where the parties (other than the WCB) and the Appeals Commission may not be aware of such implications.

Appeals Review Recommendation 13

It is recommended that the Appeals Commission be the only level of appeal preceded by an informal supervisory review and a mandatory alternative dispute resolution process. It is also recommended that the Appeal Commission determine which issues are matters acceptable for appeal.

WCB - Alberta Response **Status: Supported**

- The WCB supports the main part of this recommendation, which in substance is the same as Recommendation 9. The response provided under Recommendation 9 applies equally to Recommendation 13.
- The WCB does not support the notion that the Appeals Commission can decide which issues are acceptable for appeal. The WCB believes that the legislation should succinctly state the jurisdiction of the Appeals Commission and that the Appeals Commission should not have discretion to determine its own jurisdiction.

Opportunities for Improvement

See the response to Recommendation 9.

Background

- For the main part of this recommendation, see the response under Recommendation 9.
- As for the second part of this recommendation, the WCB believes that this would lead to inconsistent decision-making and system-wide uncertainty if the Appeals Commission was allowed to decide which cases it would hear and which cases it would not. It is usual for the legislation governing administrative tribunals to strictly define the jurisdiction and not leave jurisdiction as a discretionary matter.

Appeals Review Recommendation 14

It is recommended that the full operational and administrative costs of the Appeals Commission be paid from General Revenue to the Ministry of Justice, rather than through the WCB. The WCB would, however, reimburse General Revenue.

WCB - Alberta Response **Status: Supported**

- The WCB supports the recommendation, but would continue to be required to reflect the Appeals Commission's cost as a part of the levy to Alberta employers.
- Regardless of where the dollars are routed, directly to the Appeals Commission or to General Revenue, the employers of Alberta will still fund the appeals system.

Opportunity for Improvement

In order to increase the perception of distance between the WCB and the Appeals System, the Appeals Commission could levy employers separately from the WCB. This would demonstrate the Appeals Commission's direct accountability to stakeholders.

Background

- WCB - Alberta is fully funded through insurance premiums collected from employers. The WCB does not receive any tax dollars or government funding.
- Currently, the Appeals Commission budget is not regulated by the WCB. The Appeals Commission budget is discussed with the Minister of Human Resources and Employment and then funded by employers through the premiums charged by the WCB.
- The current budget of the Appeals Commission is $6 million.
- The average cost of an appeal at first level of appeal internal to the WCB, through the Claims Services Review Committee (CSRC) or Assessment Review Committee (ARC), is $550.
- The average cost of an appeal at the Appeals Commission is $4,900.
- If the CSRC/ARC or first level of appeal is removed – as many as 2,400 additional appeals could be sent for decision to the Appeals Commission. Assuming the dispute resolution process would be funded through the existing CSRC/ARC budget, this would result in an additional $11.8 million in Appeals Commission administrative costs or an additional $.04 on the average premium rate of $1.28.

Appeals Review Recommendation 15

It is recommended that the Appeals Commission be appointed by, and report to, the Ministry of Justice while the Workers' Compensation Board of Directors be appointed by, and report to, the Ministry of Human Resources and Employment.

WCB - Alberta Response **Status: Supported**

- The WCB supports increasing public confidence in the appeals process and believes that if the perception of independence of the Appeals Commission is enhanced through its being appointed by and reporting to a different department of government, then the WCB supports the recommendation.
- In order for the Appeals Commission to be accountable not only for its decisions but also fiscally for its operations, the WCB recommends that a governance structure for the Appeals Commission be installed. This governing body would report to the Minister responsible for that department.

Opportunities for Improvement

This recommendation suggests a key structural change to the current appeal system by having the Appeals Commission report to another department. While it is important to enhance the appearance of independence, this is also an opportunity to improve the accountability of the Appeals Commission by implementing its own governance structure. A Board of Directors for the Appeals Commission, representing stakeholders, should result in the Appeals Commission being accountable not only for the content of decisions, but also for its budget.

Background

- At present, Section 6 of the Workers' Compensation Act provides a "blank cheque" to the Appeals Commission. Since employers must ultimately fund the Appeals Commission's operations through the Accident Fund, the governing body would provide fiscal accountability to the Appeals Commission.
- A representative stakeholder Board of Directors for the Appeals Commission should be empowered to hire and evaluate the performance of the Chairman and Chief Appeals Commissioner and, through him, the performance of the entire Appeals Commission. This will enable accountability in decision-making. This would deter the Appeals Commission from making decisions that are technically within the law, but would have system-wide implications and may be contrary to good public administration.

Appeals Review Recommendation 16

It is recommended that the Commissioners, as decision-makers, be neutral and not representative of employers, workers, or their affiliation, in order to eliminate the perceived bias of favoring one body over another. Commissioners from a variety of Backgrounds, including management and labour, are to be chosen for their proven competencies. Hearing Panel Chairs should, however, be those with legal training. It is recommended that Section 5.1(1)(b) and (c) of the WC Act be amended to support the intent of this recommendation.

WCB - Alberta Response **Status: Supported**

- The WCB supports this recommendation, as we believe it is more important to select competent commissioners, as opposed to those that are selected for their affiliation to a specific group.
- This recommendation eliminates appointing individuals with partisan biases and should increase the perception of fairness with the process and decisions.

Opportunities for Improvement:

This recommendation enables the recruitment of commissioners from diverse backgrounds and all walks of life. It allows individuals to be chosen on the basis of their qualifications, competencies, impartiality, fairness and commitment to public service, rather than affiliation-based criteria. Overall, this should allow the Appeals Commission to use common sense people to make common sense decisions.

Background

- There is a vast difference between the function of the WCB's Board of Directors and that of the Appeals Commission. The Board of Directors has responsibility for establishing the policies that are the foundation of workers' compensation in Alberta. The system is in place to serve both employers and workers and, indirectly, the general public. It is therefore entirely appropriate ior there to be partisan representation on the Board of Directors of the WCB to ensure all appropriate stakeholder interests are represented.
- Conversely, the Appeals Commission needs to be totally impartial. The Appeals Commission is supposed to neutrally apply the legislation and policy to the facts and dispassionately arrive at a decision. This is an adjudicative function, much like a judge, in which partisanship serves no role.
- In regards to legal training for panel chairs, the WCB supports that panel chairs in particular should be well versed in the principles of administrative law and the operation of tribunals, but that they do not necessarily need to be lawyers.

Appeals Review Recommendation 17

It is recommended that the Appeal Commission's appeal process allow parties on its own motion or at the application of parties, to call witnesses to give evidence under oath and who may be cross examined. Witnesses, where necessary, shall be subpoenaed. A subpoena may be issued where it appears that the evidence to be presented by the person to be summoned is relevant to the matter, and that the person summoned is reasonably likely to be able to supply the evidence.

WCB - Alberta Response

Status: Existing

The WCB supports this recommendation as the Appeals Commission's jurisdiction currently allows for this.

Opportunity for Improvement

Both the WCB and the Appeals Commission should better advise the parties to an appeal of the existing appeal procedures.

Background

- The Appeals Commission already has the jurisdiction to call witnesses to give evidence under oath and who may be cross-examined.
- The WCB would not support subpoenaing the first decision-maker (case manager). This is not required in the recommendation, but we felt clarification was required. (This is not unlike the process of the courts. An appeals court judge does not subpoena the lower court judge as a witness in the appeal.)
- The subpoena of the initial decision-maker would be costly due to the preparation time required for the case manager or adjudicator. We feel the required documentation file, as it currently does, should stand as the first decision-maker's testimony.

Appeals Review Recommendation 18

It is recommended that all future Chief Commissioners of the Appeals Commission be lawyers and that their appointment be limited to two, three-year terms.

WCB - Alberta Response **Status: Not Supported**

- The WCB supports that the Chief Appeals Commissioner should have pertinent qualifications and experience.
- However, we do not agree that to be qualified for the position, the individual must be a lawyer, only that the individual appreciates the fundamentals of natural justice and the principles of operating a quasi-judicial tribunal.

Opportunity for Improvement

WCB recommends that a list of competencies and related experience be developed in consultation with stakeholders prior to the selection of the next Chief Appeals Commissioner.

Background

- The intent of the workers' compensation system is to ensure ease of use and accessibility without requiring the guidance of a lawyer.
- The hiring of a lawyer to head the Appeals Commission and the proposed transfer of the Appeals Commission to the Ministry of Justice all point towards a more complex and legalistic system.

Appeals Review Recommendation 19

It is recommended that all parties to the appeal shall receive summaries of the facts and authorities (legislation, regulation and policy) being used to present each party's respective case. This information is to be collected by the Clerk's Office and distributed to all parties no less than 14 days prior to the date of the hearing.

WCB - Alberta Response **Status: Existing**

- The WCB supports the proposition that where written submissions are provided, interested parties should receive copies before the hearing. (This is the current practice and we believe that this occurs – however, we do not track this information.)
- We would not recommend taking this current practice further by recommending that all parties provide briefs. This would result in a significant increase in the cost of the appeal, greater reliance on lawyers, less accessibility for un-represented parties and in some cases, unnecessary paperwork.

Opportunity for Improvement

The Appeals Commission could clarify this procedure when communicating the appeals process to appellants.

Background

- Currently all written submissions from interested parties are shared.
- If the recommendation intends that the current step be taken one step further and a full brief is prepared and shared, the appeal system would become more legalistic.
- The intent of the workers' compensation system is to ensure ease of use and accessibility without requiring the guidance of a lawyer.
- The introduction of the requirement to provide a brief would in itself reduce the accessibility of the Appeals Commission for many injured workers and employers.

Appeals Review Recommendation 20

It is recommended that all appeal hearings shall be recorded and a copy of the transcript provided to the appellant upon request.

WCB - Alberta Response **Status: Partially Supported**

- The WCB supports the intent of the recommendation, in that a written transcript should be available if required by any party to the appeal.
- The WCB recommends that instead of incurring the cost of transcription, an audio recording would be provided at the Appeals Commission's cost. The requesting party would pay for production of a transcript.
- We presume that any "interested" party, not just the appellant, would be entitled to and could pay for a transcript.
- The administrative cost of transcription would be approximately $2 million.
- The Appeals Commission would need to put in place a system of recording that ensured the quality of the recording and its safe storage.

Opportunity for Improvement

An audio recording, with transcription upon request and at cost, would ensure the integrity of the appeal record.

Background

- We do not support providing a transcript of every hearing. The hearing decision already includes a description of the hearing proceedings, but transcripts can be made upon request.
- The courts follow the practice of audio recording the proceeding and then the parties may request written transcripts at their own cost.
- The $2 million estimated cost of transcription was developed using the following information: approximately 4,000 cases x $540 per case.
- The average cost of transcription, $540 per hearing, is based on:
  1. $60/hr attendance fee
  2. average 35 pp. transcript/hr
  3. $6/ transcribed page
  4. average hearing length of 2 hrs

Appeals Review Recommendation 21

It is recommended that Appeal Hearing Panel members draft and finalize their own decisions.

WCB - Alberta Response **Status: Supported**

- The WCB agrees that, in accordance with principles of administrative law, the actual person or body charged with the authority to make the decision should both make and write the substance of the decision.

Opportunities for Improvement

There is an opportunity here for the Appeals Commission to improve the quality of decision-making and decision writing through appropriate training for commissioners in those processes. Those utilizing the appeal process will have greater confidence in the system knowing that the individual or body that heard the case will actually make and write the decision.

Background

- In the past, the Appeals Commission has been criticized for delegating decision writing to the registrars. It was said that if the commissioners then agreed with the decision as drafted by the registrar, they would sign it as their own. If this practice did indeed occur, it was likely contrary to the principles of administrative law.
- There is nothing wrong in commissioners seeking editorial assistance or consulting with others in the drafting of a decision. The point of this recommendation is that ultimately the rationale that decides the case must come from the actual commissioners who heard the case.

Appeals Review Recommendation 22

It is recommended that the WC Act be amended so that where there is doubt on an application for benefits in compensation on any issue respecting the application, and the balance of probabilities lays in the evidence, the benefit of the doubt shall be given to the worker (this now appears in policy only). Where the Appeals Commission has difficulty in reaching a decision on each matter under appeal, the benefit of doubt shall apply.

WCB - Alberta Response **Status: Not Supported**

- The WCB does not support the creation of legislation that would require the Appeals Commission to resolve 'difficult' cases in favor of the worker. 'Difficult' is a subjective interpretation. Currently, in cases of equal evidence the benefit of the doubt is given to the worker.
- 'Benefit of doubt' is applied where the evidence for and against a claim is equal, but the benefit of doubt principle should not be applied simply because a case is considered 'difficult'.
- Decisions must be based on evidence of a balance of probabilities – there is rarely a case where all factors are equal.
- It is our existing policy and practice to make decisions by tipping the balance of probabilities in favour of a worker in those cases of equal evidence.

Opportunity for Improvement

The WCB and the Appeals Commission should provide clearer explanation and communication around the application of the benefit of the doubt policy.

Background

- Our current benefit of the doubt policy: If all the evidence for and against a decision on a claim is equally balanced, the benefit of doubt goes to the injured worker.
- The following policy of the WCB is in place for all decision makers including the Appeals Commission:

  Benefit of Doubt Policy:

  A worker is not required to provide proof beyond any reasonable doubt in support of a claim for compensation. Adjudication is determined on the balance of probabilities, based on all the facts. If, however, there is doubt on any issue because the evidence equally supports one or more decisions, the WCB will resolve the issue in the worker's favour.

  The principle of benefit of doubt, however, is not to be used:

  - as a substitute for lack of evidence, or
  - in a purely speculative sense, or
  - when the issue can be decided on the balance of probabilities.

Appeals Review Recommendation 23

It is recommended that the decision of the Appeals Commission be filed in the Court of Queen's Bench as an Order of the Court if the decision is not implemented by the WCB within 30 days from the date of the decision.

WCB - Alberta Response **Status: Not Supported**

- The WCB does not support this recommendation since the vast majority of Appeals Commission decisions are implemented within 10 days of receiving the decision.
- An order of the court must not only be filed, but be served. Filing fees are $200 per action. Service must normally be personal, which will have to be effected by process servers. The person filing also pays filing and service fees.
- Currently the Appeals Commission decisions can be enforced by way of judicial review.
- The recommendation essentially adds another process step. Even if the decision was filed with the courts, a party must still apply to the court to enforce the decision, an option the party has now without filing.

Opportunity for Improvement

In the background information below, some examples are given to illustrate where an appellant could be confused as to what winning their appeal means. In both writing the decision and implementing it, the WCB and the Appeals Commission should be very clear what the implementation of a decision would look like in terms of benefits or next steps.

Background

- The requirement of the Appeals Commission to file a decision points towards a more complex and legalistic system.
- The current practice of the WCB is to immediately implement decisions of the appeals bodies on receipt of the decision. Procedurally, case managers are expected to take action on implementing decisions within 10 days of receiving notification of the decision.
- We are not suggesting that we do not exceed the 10 days in some instances, and perception can be an issue. Confusion and misunderstanding can arise with the following circumstances as examples:
    - The decision, while indicating that the appellant was successful, actually does not result in any further compensation payable. The appeals body may decide to accept the claim but there was, in this case, no time lost from work so no wage loss benefits are issued. The decision has been implemented, but the appellant does not believe the decision has been honored since they do not receive anything or see any new activity arising from the decision.

- The wording of the decision is ambiguous or directs further investigation. The decision may state that the WCB is to "...investigate entitlements due to chronic pain". This decision may be interpreted differently by the appellant than by the WCB case manager and would require further investigation as indicated in the Appeal decision. The investigation would result in another decision that the appellant may or may not support.

Appeals Review Recommendation 24

It is recommended that along with a decision, where appropriate, the rate of benefit or assessment be decided by the Appeals Commission and implemented by the WCB case manager within 30 days from the date of the decision.

WCB - Alberta Response **Status: Not Supported**

- This recommendation appears to suggest that where the Appeals Commission has decided the issue before it, it may also decide all related (ancillary) issues. If so, the WCB does not support the recommendation, because it allows the Appeals Commission to decide issues that were not the subject of the appeal and on which there is no previous decision requiring their review.
- The Appeals Commission should have 'appellate jurisdiction' – dealing only with the appeal. It should not have jurisdiction to decide issues of first instance.

Opportunities for Improvement

There is an opportunity for both the WCB and the Appeals Commission to clarify, through process or procedure, what issues are before the Appeals Commission in any given case for a decision. The parties proceeding to appeal before the Appeals Commission should not be under any misapprehension about what is being appealed. Clarity in this regard can be enhanced by the processes described under Recommendation 9 where the revamped Claims Services Review Committee (CSRC) has the duty to prepare files for appeal to the Appeals Commission by ensuring clarity of issues and sufficiency of evidence.

Background

- The recommendation suggests that if the Appeals Commission is concerned with an issue of work-relatedness, having decided that issue in favor of the worker, the Appeals Commission should also decide what benefits the worker will receive. From a jurisdictional point of view, this would have the effect of expanding the Appeals Commission's jurisdiction from strictly appellate to decision-making at first instance.
- In many cases, further investigation or information is required in order to make the related decision. This may involve gathering additional medical, financial or other relevant information. It would therefore be premature for the Appeals Commission to make the ancillary decision.

- The WCB has many staff, sophisticated systems and a large body of policies and procedures which enable it to make decisions regarding compensation rates and other entitlements, as well as premium rates and other matters relating to WCB employer accounts. If the Appeals Commission were empowered to decide these ancillary issues as well, it would have to recreate the entire infrastructure that is required to carry out these complex tasks. In effect, a second WCB would be created at the Appeals Commission.
- The Appeals Commission should be required to make decisions according to existing policy, clinical impairment guides and the published premium rates. If the Appeals Commission were empowered to decide their own compensation rates or premium rates, this would in effect create two separate compensation systems. In Ontario, the Appeals Tribunal for a period of time was not bound by WCB policy and this, in effect, created two workers' compensation systems. The Ontario experience has been described as "disastrous" and Ontario has since moved to the Alberta model where the Appeals Tribunal has a strictly circumscribed jurisdiction and must decide cases according to policy.
- Allowing the Appeals Commission to make decisions at first instance would also deprive workers and employers of the right of appeal.
- With regard to that part of the recommendation relating to the 30-day implementation, it should be noted that in cases where further investigation is not required, it is the WCB's practice to implement the decision within 10 days.

Appeals Review Recommendation 25

It is recommended that all decisions and case facts be published quarterly in a manner that is in keeping with the Freedom of Information and Protection of Privacy Act (FOIP) and (a) made easily available to the public at reasonable cost (b) such availability shall be advertised widely to the public and key WCB stakeholders and (c) information as to the availability of all decisions and case facts be included on the Appeal forms. While respecting each case be dealt with according to it's own merit, the publication of all decisions will support consistency in decision making in instances where circumstances and fact are essentially the same.

WCB - Alberta Response **Status: Not Supported**

- Although the WCB does not support the publication of all Appeals Commission decisions, we do support the publication of select decisions to educate stakeholders on the process and the legislation.
- The WCB strongly supports the need to have consistency in decisions made by the Appeals Commission. Implementing a quality assurance process would ensure consistency as opposed to relying on the publication of decisions to deliver consistency.
- Each appeal must be considered on its own merits and since this is an administrative tribunal not based on case precedence there will be an expectation if the case is even remotely similar that it should be decided the same way. The move to publish distinct cases would make the system more legalistic and therefore move further away from the original intent of 'accessibility for all' of the administrative tribunal.

Background

- The Appeals Commission already produces a publication "In Review" that highlights specific cases that the commissioners feel would be interesting to stakeholders.

Appeals Review Recommendation 26

It is recommended that the Alberta government require a comprehensive training and continuing education program that is appropriate to their roles for Hearing Chairs (Commissioners), Registrars, Appeals Advisors, and Alternative Dispute Resolution Officers.

The program is to cover, amongst other matters, WCB legislation, regulation, policy, weighing of evidence, development of independent analytical thinking and writing skills, and usage of a standardized format for recording decisions to meet all of the requirements of administrative law. The costs for this program are to be paid for by General Revenue and reimbursed by the WCB.

WCB - Alberta Response **Status: Supported**

- The WCB agrees that all of the Appeals Commission staff should receive adequate training (e.g. Foundations of Administrative Justice course, WCB in-house Case Management, etc.).
- Currently the WCB and the Appeals Commission provide all required training within our existing budget.
- If an alternate training method was selected, the increase to the Appeals Commission budget would need to be reviewed by the WCB since increased costs are ultimately paid for by employers.
- The WCB supports the recommendation, but would still be required to reflect the Appeals Commission's cost as a part of the levy to Alberta employers.
- Regardless of where the dollars are routed, directly to the Appeals Commission or to General Revenue, the employers of Alberta will continue to fund the appeals system.

Opportunity for Improvement

In addition to providing training, a list of competencies and required experience should be developed prior to the selection of new appeals staff or used to evaluate further training for existing staff.

Background

- WCB is fully funded through insurance premiums collected from employers. The WCB does not receive any tax dollars or government funding.
- Currently, the Appeals Commission budget is not regulated by the WCB. The Appeals Commission budget is discussed with the Minister of Human Resources and Employment and then funded by employers through the premiums charged by the WCB.
- The current budget of the Appeals Commission is $6 million.

Appeals Review Recommendation 27

It is recommended that an appellant be able to appeal a case manager's final decision within two years from the date of the written final decision. For example the Limitations of Actions Act prescribes the two-year limitation for the commencement of most legal actions. Section 8(9) of the Workers' Compensation Act requires revision to accommodate this recommendation.

WCB - Alberta Response **Status: Not Supported**

- The WCB does not support increasing the current time limit to appeal a case manager's decision.
- The current one-year period can be waived by the Chief Appeals Commissioner to accommodate appellants with unusual or extenuating circumstances.
- When compared to other WCB jurisdictions, the current one-year time limit is the longest time limit allowed to file an appeal in Canada.
- The Rules of Court only allow six months for judicial review and appeals from decisions of the court must be filed between 20 and 90 days.
- Currently all decision letters from the WCB very clearly indicate that there is a one-year time limit to appeal, ensuring workers and employers are aware of the time limitation.

Background

- Other WCB jurisdictions and the courts generally use far shorter limitation periods for appeals.
- The current one-year period can be waived by the Chief Appeals Commissioner to accommodate appellants with unusual or extenuating circumstances.
- The limitation was put into place in part to reduce the number of claim files re-opened to challenge historical costs in an attempt to change an employer's experience. Such historical challenges are intended to reduce the dollars paid to injured workers and therefore reduce employers' premium rates.
- Based on our past experience, the proposed increase in the time limit would only benefit businesses or lawyers in the community that make their money on, as it is termed, 'mining old files,' and not necessarily injured workers.

Note: There is no analogy to the Limitations Act, which deals with starting an action, not appeals. The Workers' Compensation Act already has a one-year limitation for starting a claim.

Appeals Review Recommendation 28

It is recommended that all claimants whose appeals were dismissed since the creation of the Appeals Commission be entitled upon application to a further appeal under the new system. The right to a further appeal will be widely advertised in all of Alberta's major daily and weekly newspapers as well as major radio and television stations. Appeals can be made within two years from the date of proclamation of the legislation recommended in the Committee's Final Report.

WCB - Alberta Response **Status: Not Supported**

- The WCB does not support the rehearing of all appeals heard since the creation of the Appeals Commission in 1988.
- There is already a reconsideration power for any case that has new evidence. If workers felt they did not receive a fair hearing, remedies are currently available to them (judicial review, Ombudsman, and the Human Rights Commission).
- By granting another appeal, to appeals that have already received due process, we would be overlooking what the courts and the Ombudsman have already said in their findings when claimants applied to those bodies.
- This recommendation would also be extremely prejudicial to employers in that it infers that only injured worker appeals would be reheard. If this recommendation was to go forward in a fair and equitable manner, all appeals should be reheard.
- The estimated cost of this recommendation would be approximately $118 million, with advertising and administrative costs to support only this rehearing process estimated at an additional $2 million.
- This could result in extensive retroactive changes to both worker entitlement and employer premiums, which could be severely prejudicial.
- Today's employers should bear the costs of today's injuries. If past decisions are reinterpreted there will be issues about who should pay.
- At the Appeals Commission's current rate of hearing appeals, approximately 1,200 per year, if they reheard only prior years' contentious claims this process would take 20 years.

Opportunity for Improvement

The WCB will take the opportunity to better explain the criteria and process for reconsideration.

Background

- If all past decisions were reconsidered we would hear approximately 24,000 appeals. The average cost of an appeal processed by the Appeals Commission is $4,900.
- We agree that all claims should be resolved and that contentious issues should be concluded and not revisited. The appeal system, as designed, should provide this mechanism.
- There is already a reconsideration power for any case that has new evidence or where fairness or misapplication of policy or legislation is felt to have taken place (judicial review, Ombudsman, and the Human Rights Commission).

Appeals Review Recommendation 29

It is recommended that where the alternate dispute resolution (ADR) process is unsuccessful, the ADR Officer will immediately advise the Clerks' Office of the appellant's intent to proceed with the appeal. From that point, to the time a final decision is made including the date of the written decision, no more than 90 days are to elapse. This time period is to become part of regulation.

WCB - Alberta Response

Status: Not Supported

- The WCB supports a 90-day turnaround time as a standard, but not entrenched in legislation or regulation.
- Legislative or regulatory rules would decrease the flexibility of the system to the detriment of the appellant, especially in cases of unusual or complex circumstances.
- The 90-day time line would also harm parties/representatives who may require adjournments or more time for preparation for very legitimate reasons.
- We would also suggest that the appellant have the responsibility for communicating their intentions subsequent to an ADR session. To ensure the appellant's desires are clear, this should be a process between the Clerk's Office and the appellant.
- This recommendation coupled with the recommended elimination of our current first level of appeal will create additional pressure on the Appeals Commission and may increase cycle times as well as require additional administrative staff to ensure the 90-day cycle time is met.

Opportunity for Improvement

The WCB will publicize and commit to service standards with regard to the appeals process, to add clarity to the process and avoid delays.

Background

- The number of appeals submitted to the first level of appeal (CSRC/ARC) internal to the WCB in 2000 was approximately 3,680, at an average cost of $550.
- The average number of appeals to the Appeals Commission annually is approximately 1,200, at an average administration cost of $4,900 (based on their current administrative budget).
- Appeal volumes will increase to the Appeals Commission as a result of the recommended elimination of the Claims Services Review Committee (the WCB does not support this recommendation). If the first level of appeal is eliminated, there will be approximately 2,400 potential additions to the Appeals Commission. The average cost difference for each appeal when comparing CSRC/ARC to the Appeals Commission is $4,350 more per appeal. Not all of the appeals will go on, but we believe the sum of these impacts could be from $4.8 million to $10.4 million in administrative costs for the Appeals Commission.

Appeals Review Recommendation 30

It is recommended that the Appeals Commission determine what issues are appealable, accept new issues, and continue to accept new evidence throughout an appeal.

WCB - Alberta Response

Status: Not Supported

- The matter of the Appeals Commission being able to select which issues are appealable is dealt with in our response to Recommendation 13.
- With regard to that part of the recommendation stating that the Appeals Commission should be empowered to accept new issues, the response under Recommendation 24 regarding deciding ancillary issues, also applies here. In addition, accepting new issues for the first time at the hearing might be a breach of natural justice if one or more parties was not given adequate prior notice and the opportunity to prepare for the new issues.
- Respecting acceptance of new evidence, the Appeals Commission is already obligated to accept such new evidence if it pertains to the issue before it.

Opportunities for Improvement

Both the WCB and the Appeals Commission have an opportunity to develop clarity with regard to which issues are appealable and the application of new evidence. Further information should be provided to users of the appeal system on these concepts.

Background

- For determining what issues are appealable, see the information under the response to Recommendation 13.
- For accepting new issues, see the information provided under the response to Recommendation 24.
- With respect to new evidence, at present section 8(5) of the Workers' Compensation Act already stipulates:

  In considering an appeal under this section the Appeals Commission shall give all interested parties an opportunity to be heard and to ***present any new or additional evidence***.

Appeals Review Recommendation 31

It is recommended that the WCB develop a Clients' Bill of Rights and that it become a provision of the WC Act. The Clients' Bill of Rights, among other matters, must include the right to be fully informed of all benefit entitlements and all administrative procedures involved in the process of determining eligibility for Workers' Compensation benefits as well as the appeals process.

WCB - Alberta Response **Status: Existing**

- The WCB supports the concept of a written statement of client expectations which WCB staff abide by.
- This is already embodied in a statement of rights included in the policy manual.
- The statement is also included in our Employer and Worker handbooks to ensure that all users of the system are aware of their rights.

Background

Our current statement of rights:

Statement of rights for Employers and Injured Workers:

Fairness and impartiality – You have the right to fair and impartial determination on any issue arising from the Act.

Review of a decision – You have the right to a review of any previous WCB decision.

Appealing a decision – You have the right to appeal any adjudicative or assessment decision directly affecting your interests, within 12 months from the date of the decision.

Presumption of honesty – You have the right to be presumed honest unless shown to be otherwise.

Courtesy and consideration – You have the right to receive courteous and considerate treatment from all WCB staff.

Access to information –You have the right to examine all relevant documents when a decision directly affects your interests.

Privacy and confidentiality – You have the right to privacy and confidentiality. Information given to the WCB will be used for the purposes allowed by the Act.

Appeals Review Recommendation 32

It is recommended that an Implementation Steering Committee be struck to oversee the implementation of the recommendations contained in this report. Members of the Appeal Systems Review Committee are willing to serve on this Implementation Steering Committee (see Section VI. for a proposed schedule to implement the Review Committee's recommendations).

WCB - Alberta Response **Status: Not Supported**

- The WCB's mandate is to manage a fair and just workers' compensation system on behalf of Albertans.
- We thank the committee for their recommendations, but feel that the success of the implementation relies on the involvement of our stakeholders and our Board of Directors.

Committee Appointed

February 11, 2000 – *Minister appoints the five-member Appeals System Review Committee.*

Chair Samuel Friedman, QC retired, Denis Herard (MLA), Robert Blakely, President of Alberta & NWT Building and Construction Trades Council as well as a lawyer, Sharon Copithorne, Executive Director, Alberta Construction Association and Fred Clarke, Alberta Business Community Representative.

The scope and purpose of the Appeals System Review Committee was to:

- Examine the WCB Appeals System, consisting of the Assessment Review Committee and the Claims Services Review Committee at the first level, and the Appeals Commission at the second and final level;
- Conduct a paper review of practices in other jurisdictions;
- Determine the effectiveness of the Appeals System in serving Alberta employers and workers; and,
- Make recommendations for improvement to the Appeals System.

A number of stakeholder groups and individuals met with the committee during February to June 2000 and made formal presentations (16 presentations, 11 written submissions) and a stakeholder survey was also used. Out of 2,000 stakeholder surveys that were mailed out during June and July, 529 were returned which is a response rate of 26 %. (Consideration: There are more than 95,000 employers and 1.2 million workers covered by WCB in Alberta. Approximately 1200 appeals go to the Appeals Commission annually.)

Committee Report Presented

November 20, 2000

On November 20, 2000 the Minister responsible for the Workers' Compensation Board, Clint Dunford, presented the Appeals System Review Report to the Workers' Compensation Board. At a news conference, the Minister announced receipt of the report, which outlined 32 recommendations from the committee.

The Minister indicated at that time, employers, workers, and other interested stakeholders could review the report and provide written comments to the Minister by January 31, 2001. The Workers' Compensation Board was also to review the report and respond to the Minister on January 31, 2001.

The WCB issued an information release regarding the process they would be undertaking to review and respond to the report – *" WCB - Alberta is currently reviewing the recommendations to understand and determine the operational, economic and legislative impacts — we will then share that information with all our stakeholders. To facilitate the discussion with stakeholders, the recommendations will be incorporated into the WCB's service consultation review. We made a commitment to share and discuss the recommendations with stakeholders. This discussion is an essential step we must take in the review of the recommendations."*

WCB - Alberta Preliminary Response

December 5, 2000

At a news conference, the Workers' Compensation Board – Alberta provided a preliminary response to the report and outlined the review process being undertaken to reassure Albertans these reports would not sit on the shelf. As requested by the Minister, the WCB assured a response to the recommendations would be provided to the Minister by January 31, 2001.

WCB indicated that the report offered an opportunity to build greater confidence in the appeals system and medical processes and the recommendations confirmed that many of WCB's initiatives and directions are appropriate.

Although the recommendations in the report are the result of an invitation to dissatisfied stakeholders to participate, WCB looked at the reports for opportunities to improve its services. However we were and are still concerned that with only 529 respondents to the Appeals System Review Committee, the findings could not be generalized to the entire population of injured workers and employers covered by WCB. In 2000 alone, 140,000 injuries were reported and approximately 36,900 workers' injuries were severe enough that they missed more than a day from work. We rely on independent research completed by the Criterion Research Corporation in Alberta, which can be generalized to the entire population of workers and employers. We survey injured workers and employers quarterly to measure satisfaction levels with service for the WCB. Our independent research has 5,000 randomly selected participants annually. Our statistically valid research results represent the feelings and opinions of our customer base within +/- approximately 3%.

WCB, as it indicated from the outset of the committee's formation, would be seeking input from a balance of stakeholders (workers and employers) in addressing the recommendations. Status on December 5:

- Meetings with stakeholders already begun.
- Letter sent to the Ministry of Justice to begin preliminary discussions regarding the Appeals process recommendations.
- Alberta Medical Association and College of Physicians and Surgeons of Alberta have been contacted to discuss recommendations regarding Medical services.
- Three internal WCB teams were established to review and respond to the recommendations (Case Management, Medical and Appeals).

WCB - Alberta Process to Respond to Recommendations

WCB – Review Teams established

The recommendations in the report were divided into three main themes:

- service issues
- medical policy & process
- appeals policy & process

Recommendations under each theme were thoroughly reviewed by a group of internal experts led by our senior management team.

Stakeholder Discussions

We met with stakeholders to review the report on three separate occasions in December. One meeting was set-up specifically with key stakeholders, and two meetings were part of our Policy Consultation process. Stakeholder discussion was heid, but this was not a full consultation. Our stakeholders will be responding with their views directly to the Minister as he requested on November 20, 2000.

January 9, 2001

A review of WCB's response was discussed at a session with stakeholders on January 9, 2001. Valuable feedback and dialogue from the group added a valuable perspective. Although a range of key stakeholders was invited to this session, the majority of stakeholders representing labour elected to provide their input to the recommendations directly to the Minister. Though largely an employer representative stakeholder group attended this session, a valuable range of considerations was heard.

Administering the Social Contract – The Meredith Principle in Context of the Appeal Review Recommendations

An agreement between workers and employers made over 80 years ago, to provide no-fault disability insurance for the mutual benefit of workers and employers, is the basis of today's workers compensation system. The agreement calls for employers, not taxpayers or workers, to fully fund an insurance program to cover the cost of workplace injuries for their employees. In return for this insurance, workers give up the right to sue employers for work-related accidents. Employers also give up their right to sue employees whose carelessness caused work-related injuries.

Sir William Meredith designed this agreement in 1913, and these principles are now commonly referred to as the Meredith Principle:

- workers receive compensation benefits at no cost for work-related injuries;
- employers bear the direct cost of compensation and in return receive protection from lawsuits arising from injuries;
- negligence and fault for the cause of injury are not considerations; and
- the system is administered by a neutral agency having exclusive jurisdiction over all matters arising out of the enabling legislation.

This agreement has been in place for over 80 years, but the basic principles remain as viable today as they were then.

- Workers' are assured of insurance coverage, health care and rehabilitation without having to either sue their employer, or carry their own disability insurance. Without the system, it is conceivable that employees injured at work could wait months or years to settle disputes through the courts. The financial and emotional impact on the worker and their family would be tremendous. (140,000 claims were processed by WCB last year and the court systems are not clogged settling lawsuits for workers or employers in getting financial restitution or specialized care for injured workers.)
- Alberta employers stay in business while providing full insurance coverage to their employees (there are no options to limit coverage with WCB insurance as there is with private disability insurance). Without the system, it is conceivable that employers could be put out of business if they were sued for one severe workplace injury.

WCB, along with our counterparts around the world, administers this social contract and recognizes that we must continually balance the opposing interests of workers and employers in policy and legislation. It is this dialogue of interests and needs which gives rise to reviews and debate on the aspects of our business. To keep the balance, all renegotiations of that social contract must be framed within the intent of the Meredith Principle and represent the needs of both parties to the system. We feel our responses to the Appeals System Review Committee recommendations are in the best interests of workers and employers. The WCB looked at the report as an opportunity to improve services and glean fresh ideas. Although the input that generated the reports was largely from a small group of dissatisfied stakeholders, their voice was not diminished in relevance, but was considered in the context of our response.

Our Principles

The Workers' Compensation Board - Alberta operates according to the following principles, which apply to all workers and employers protected by the Alberta *Workers' Compensation Act*:

No fault compensation – Workers are eligible to receive benefits for work related injuries no matter who is at fault.

Collective liability – All employers in covered industries share responsibility for fully funding the cost of workers' compensation insurance.

Universal immunity – Participating employers and their workers have universal immunity against lawsuits for work-related accidents.

Exclusive judicial jurisdiction – The workers' compensation system has exclusive legal authority to make all decisions arising under the Workers' Compensation Act, subject to the rules of natural justice.

Fair compensation and fair premiums – Compensation should be fair and take into account both the nature of the injury and the impact on employment earnings. Premiums should be fair and competitive and account for full-funding of claims, reserves, and the costs of administering the system.

Benefit of doubt to worker – Adjudication decisions are made in favour of the injured worker where all evidence for and against is equally balanced.

Comprehensive injury prevention and disability management – The system provides a comprehensive range of services to both prevent injuries and manage disabilities.

Long-term stability, financial security and cost-effectiveness – The system is structured and operated in ways that ensure its long-term stability and financial security as well as its overall cost-effectiveness.

Rights of Workers and Employers

The Workers' Compensation Board - Alberta is committed to upholding the rights of workers and employers under the Act, and to helping workers and employers exercise these rights. Rights of workers and employers:

Fairness and impartiality – You have the right to fair and impartial determination on any issue arising from the Act.

Review of a decision – You have the right to a review of any previous WCB decision.

Appealing a decision – You have the right to appeal any adjudicative or assessment decision directly affecting your interests, within 12 months from the date of the decision.

Presumption of honesty – You have the right to be presumed honest unless shown to be otherwise.

Courtesy and consideration – You have the right to receive courteous and considerate treatment from all WCB staff.

Access to information – You have the right to examine all relevant documents when a decision directly affects your interests.

Privacy and confidentiality – You have the right to privacy and confidentiality. Information given to the WCB will be used only for the purposes allowed by the Act.

Roles and Responsibilities – Workers' Compensation System

The Workers' Compensation Board – Alberta (WCB) is governed by a Board of Directors, appointed by an Order in Council from the Cabinet of the Government of Alberta to direct the organization. The directors are representative of the interests of employers, workers and the public. The day-to-day operations of the WCB are managed, like most insurance companies, with checks and balances within its processes and systems to fairly and consistently apply the legislation, policy and regulations they adhere to and ensure a financially stable and secure future for Alberta's workers and employers.

The Workers' Compensation Board – Alberta:

- Assigns costs to today's employers to fund the system for today's injured workers.
- Manages a reserve fund, as do all insurance companies, to be fully funded to meet the future needs of injured workers.
- Determines entitlement of claims based on legislation and policy for workers and employers.
- Relies on the support of employers, workers and the medical community in the provision of appropriate information for the WCB to assess benefits or premiums and appropriate rehabilitation for workers.
- Administers and insurance program for more than 95,000 employers and coverage for 1.2 million workers.
- Provides benefits, health care and rehabilitation to injured workers, with the goal to the sustainable return of workers to the workplace, and where workers sustain severe long-term or permanent injuries, afford them benefits to maintain their quality of life in recognition of the limitations of their injury.
- Works with injured workers, employers, health care providers and physicians to effectively provide benefits for the care and rehabilitation of injured workers.
- Provides mechanisms for appealing decisions of the WCB for both employers and workers.

Employers are responsible for fully funding the system; to maintain an account and pay premiums; to work with employees to prevent injuries and illness; and to report injuries and help injured workers return to work.

Injured workers are responsible to maintain regular contact with their employer, the WCB and their health care provider to help plan their return to work.

Health care providers have a responsibility to work with the injured employee, other health care providers, the employer and the WCB to assist in recovery and return to work planning.

Government of Alberta is responsible for the Workers' Compensation Act, under which the WCB operates. The government maintains an arm's-length relationship with the WCB allowing it to operate free of political interference in its day-to-day activities and decision-making.

Appeals Commission is an independent tribunal, responsible directly to the Minister and is the final level of appeal. The Government of Alberta, through the Workers' Compensation Act, has put significant protection in place for employers and injured workers dissatisfied with WCB decisions. The Appeals Commission, although funded by the WCB through a levy paid to government, is accountable for its operation only to the Minister – not the WCB.

The Alberta public does not fund the system through taxes nor does the government fund the Workers' Compensation Board - Alberta. WCB is funded entirely by employer premiums. Employers do not deduct any funds from workers to pay for WCB premiums. Members of the public are asked to sit on the WCB - Alberta Board of Directors.

Our Results

The following are some of WCB-Alberta's key corporate indicators of performance. This information shows that we are working hard to balance the needs of workers and employers to the benefit and satisfaction of both parties. We realize that we need to do more and remain very committed to learning and listening to constructive suggestions for improvement.

- **77.3% Average Overall Injured Worker Satisfaction rate for 2000.**
- **86.7% Average Overall Employer Satisfaction Rate for 2000.**

The WCB contracts Criterion Research, an independent professional research firm to survey both injured workers and employers to ensure that the results are accurate, representative and reliable These surveys are carried out on an ongoing basis and include more than 5,000 randomly selected participants annually. Overall survey results for the year are considered accurate by +-2.4 % for workers and by +-1.6% for employers i.e. 19 times out of 20.

Summary of Claims Administered 1998-1999

		1999		1998
Active claims as of January 1		21,194		20,856
New lost time claims	35,726 (36,900*)		36,828 (37,600*)	
New medical aid only claims	88,287		89,592	
Total new claims reported	124,013		126,420	
Recurrent claims [1]	59,295		41,363	
	183,308	183,308	167,783	167,783
Total claims administered		204,502		188,639

* Total Number of Lost Time Claims excludes previous years claims

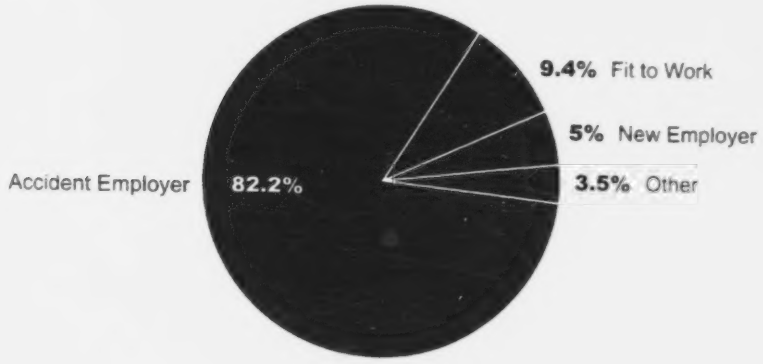
Non-eligible Claims

Lost time claims		
Insufficient information available to process claim	62	50
Not covered under Workers' Compensation Act	117	129
Injury or illness not arising out of/in course of employment	816	829
Medical aid only claims		
Insufficient information available to process claim	2,757	2,670
Not covered under Workers' Compensation Act	694	790
Injury or illness not arising out of/in course of employment	989	1,368

[1] Previously inactive claims that required further adjudication or case management. Claims may reopen for a number of reasons such as payments for medical aid or requests for further compensation benefits.

Return to Work

(Employability at claim closure – Year to date as of December 2000)



Year at a Glance

	2000	1999	1998
Number of workers covered	1,217,000	1,158,904	1,117,464
Lost time claim rate (per 100 workers)	3.3	3.2	3.4
Number of Claims reported	147,144	124,013	126,420
Number of lost time claims	40,600	36,900	37,600
Number of recurrent claims	N/A	59,295	41,363
New non-economic loss & permanent disability awards	N/A	2,116	2,088
Fatal claims accepted	118	114	105
Lost time claims disallowed on the basis of ineligibility	N/A	2.6%	2.7%
Number of new appeals – CSRC/ARC	3,706	3,820	3,391
Return to work percentage	87.2%	86.3%	86.0%
Claim costs (millions)	$797	$821	$555
Registered employers	96,194	90,989	87,134
Premium revenue (millions)	$395	$354	$412
Average actual premium rate (per $100 of insurable earnings)	$1.12	$1.07	$1.35
Investment revenue (millions)	$429	$415	$344
Fund Balance (millions)	$382	$359	$448
Rate & Benefit Stabilization Reserve (millions)	*	$157	$212
Occupational Disease Reserve (millions)	$222	$135	$121

NOTE: PRELIMINARY RESULTS FOR 2000

* The Rate & Benefit Stabilization Reserve has been combined with the Fund Balance in accordance with the Board of Directors approval of the Funding Policy change effective August 1, 2000

Number of recurrent claims - Not available yet

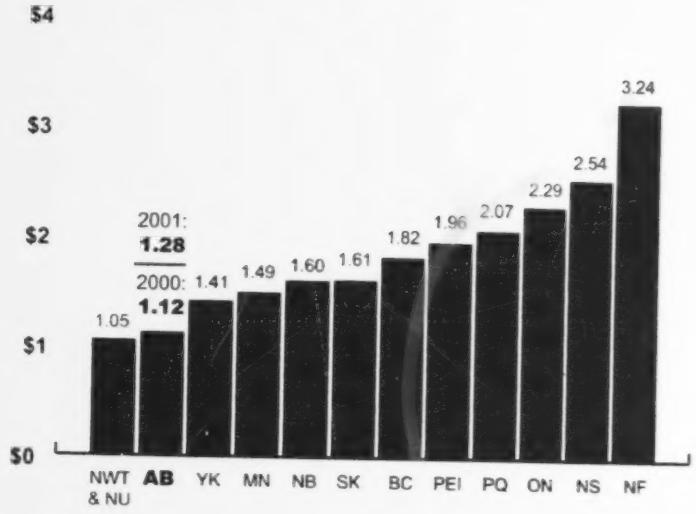
New non-economic loss & permanent disability awards - Not available yet

Lost time claims disallowed on the basis of ineligibility - Not available yet

WCB - Alberta – How Do We Compare?

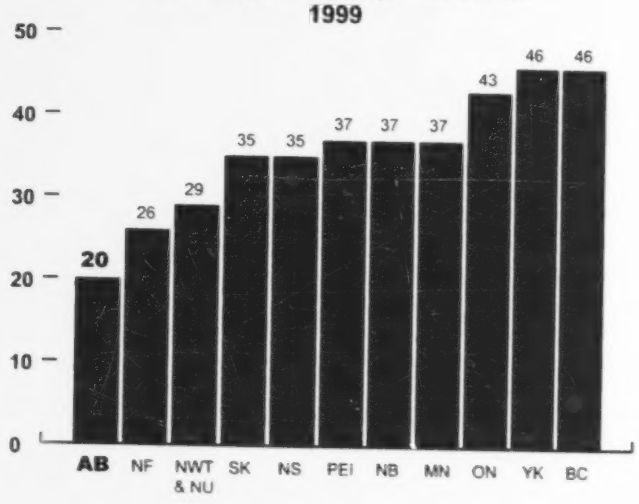
The Workers' Compensation Board – Alberta pays among the highest benefits to workers at a premium to employers that is the second lowest in Canada.

2000 Premium Rates – Alberta 2nd lowest in Canada



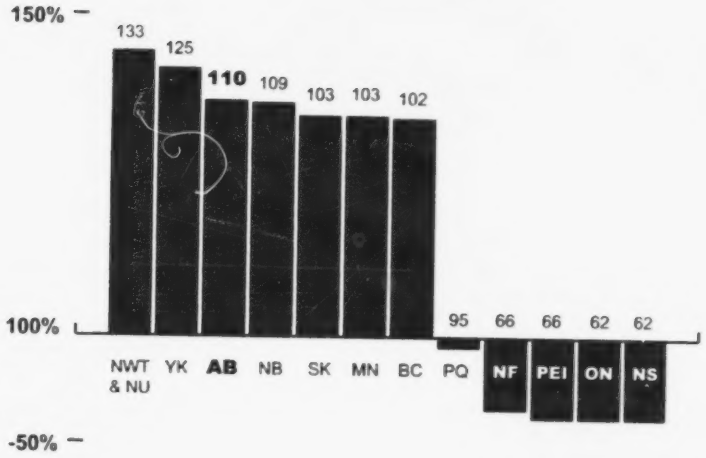
The timely response to meet the needs of injured workers is a fundamental objective of the WCB and it is something we continually strive to improve.

Average calendar days from injury to first payment issued 1999



Maintaining a fully funded reserve to meet the future needs of injured workers is sound financial management and consistent with the insurance industry.

Sound fiscal management – % funded 1999



Our Partnerships

The Workers' Compensation Board – Alberta is committed to continuous improvement in its services to its clients – workers and employers.

Stakeholders driving changes to benefits

Since the launch of the WCB's public consultation in February 1998, 16 policy changes have been completed. The consultation program has been expanded to also look at 'Services' which is a natural progression for this process. We expect that the formal consultation project will be completed in 2001 followed by final policy and process development, changes and implementation to enhance our services to customers. The five enhancements for severely injured workers resulted in more than $107 million in enhanced compensation benefits that have been received positively.

Working in partnership with workers and employers

The Partners in Injury Reduction (PIR) program is designed to encourage injury prevention and the development of effective workplace health, safety and disability management systems. It is a voluntary program that operates through the combined efforts of the WCB, Alberta Human Resources and Employment, industry partners, safety associations, employers and labour groups. Employers that join PIR and develop effective workplace health and safety management systems can earn up to 20% off the industry premium rate. This initiative is based on the concept that when employers and workers build effective health and safety systems, the human and financial costs of workplace injuries and illnesses can be reduced. Over $2 million in WCB premium refunds were distributed to 438 employers, registered in the Partners in Injury Reduction (PIR) program, for their excellence in workplace safety in 1999.

WCB Partners with the Community for Safety Awareness

Heads Up Campaign – Working in partnership with safety associations, government and employer groups this safety awareness campaign is targeted to young workers, aged 16 to 24 and their employers.

Day of Mourning – This annual event is coordinated by WCB in conjunction with employer and labour groups to help raise awareness of workplace safety and offer a memorial event to acknowledge workers injured or killed on the job in Alberta.

Mission Possible @ Work – WCB in partnership with the Alberta Motor Association is promoting and participating in their comprehensive safe driving awareness and educational program for employers.

2001 Championships – WCB is providing workers' compensation coverage for more than 5,000 workers and volunteers of the Games for the years 1999, 2000 and 2001. The Workers' Compensation Board is afforded the opportunity to talk to the 5,000 volunteers during their orientation sessions about safety.

Job Safety Skills Society – WCB works in partnership with employers, government, safety associations and concerned Albertans in the development and promotion of the Job Safety Skills program. This training program is designed to educate young Albertans of workplace hazards and to help reduce the number of workers injured and killed on the job.

WorkSafe™ Award – Since 1999, the WCB in partnership with the Alberta Chambers of Commerce (ACC), sponsors the annual WorkSafe award as part the ACC Business Awards of Distinction. The WorkSafe award recognizes excellent injury prevention, innovative disability management programs, employee wellness and integrated staff health and safety initiatives by Alberta businesses.